

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 7755 OF 2004.

Smt. Sulbha wd/o Hanumant Kambli & Ors.....

..Petitioners.

V/s

Vasant S. Kamerkar & Ors.....

...

Respondents.

Shri B. K. Raje for the petitioners.

Smt.Ranjana Parikh for respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

13-12-2004

PC:

Heard learned advocates for the parties.

The petitioners challenge the decree of eviction passed by the learned trial Judge and confirmed by the lower Appellate court. The trial Court decreed the suit on the ground of acquisition of alternate accommodation by the petitioner. The lower Appellate Court while confirming the said decree has further held that the respondents have also established the bonafide need of the suit premises for their occupation. The concurrent finding arrived at on the aspect of acquisition of alternate suitable premises by the petitioners is clearly borne out from the record. It was sought to be contended that the alternate premises were acquired by the petitioner No.2 during the life time of

original tenant and therefore same cannot be construed as the acquisition of alternate premises by the tenant. The contention is totally devoid of substance. The concurrent findings are to the effect that the premises were acquired after death of the original tenant and before filing of the proceedings for eviction. It was also sought to be contended that the documents placed on record regarding acquisition of title to alternate premises disclose that the same was acquired during the life time of the tenant out of personal income of the petitioner No.2. Neither it was the case pleaded to that effect in the written statement nor there was any evidence on record nor there was any ground to that effect taken either in the appeal before the lower Appellate Court nor even in the memo of writ petition before this Court.

2. It was also sought to be argued that the original tenant had left behind him apart from petitioner, two more daughters and they were not joined as the party-defendants in the suit for eviction, inspite of the fact that all the legal heirs of the original tenant were entitled to inherit tenancy rights. Undisputedly the specific averment in the plaint was that the persons who were residing with the original tenant in the suit premises at the time of his death were arrayed as the defendants. The said statement was not disputed apart from submitting that all the legal heirs are entitled to claim tenancy rights. Once it is apparent that there was no factual foundation led by the petitioner to contend that all the legal heirs of the original tenant were residing with the deceased tenant in the suit premises, and that therefore entitled to inherit the right of tenancy and therefore necessary parties to the suit, no fault can be found with the impugned order rejecting such contention and/or giving no credence to such an argument.

3. In the circumstances there is no case disclosed for interference in the impugned order wherein the findings clearly disclose to have been arrived at on proper analysis of evidence on record and therefore petition filed under article 227 of the Constitution is hereby rejected.

4. At this stage on oral request by the learned advocate for petitioner execution of decree for eviction shall remained suspended till 31st March, 2005 subject to the petitioner and all the adult members of the family filing usual undertaking before the Registry to the effect that they will not induct any third person in the suit premises nor part with possession and shall deliver vacant and peaceful possession of the suit premises to the respondent-landlord on or before 31st March, 2005. In case of failure to submit such an undertaking within a period of four weeks from today the order passed today suspending the execution of decree shall stand vacated automatically without reference to the Court.